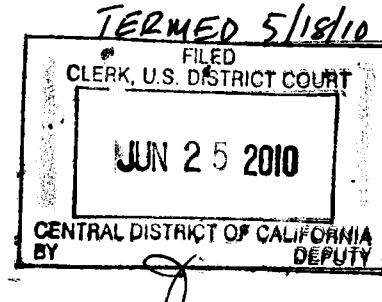


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9  
10 UNITED STATES DISTRICT COURT  
11  
12 CENTRAL DISTRICT OF CALIFORNIA

13  
14 ELGO, INC., a California Corporation, ) Civil Case No. CV 09-7407 CBM (FFMx)  
15 Plaintiff, )  
16 v. ) ORDER ON STIPULATED  
17 SIMPLYWELL, LLC, a Nebraska ) JUDGMENT AND PERMANENT  
18 Limited Liability Company, ) INJUNCTION  
19 Defendant. )  
20  
21 Upon the stipulation of the parties for entry of final judgment, and good cause appearing  
22 therefore:  
23  
24 IT IS HEREBY STIPULATED by and between Plaintiff ELGO, INC. ("ELGO")  
25 and Defendant SIMPLYWELL LLC ("SIMPLYWELL") that the Court be requested to enter  
26 judgment as follows:  
27  
28 1. That ELGO has filed against SIMPLYWELL a complaint for, inter alia,  
trademark infringement, false designation of origin and unfair competition alleging infringement  
of ELGO's trademark SIMPLYQUIT for smoking cessation product by SIMPLYWELL's use of  
the mark "SIMPLYQUIT" for smoking cessation services.

1           2. That this Court has subject matter jurisdiction over this action under 28  
2 U.S.C. §§ 1331 and 1338, and that venue is proper in this judicial district under 28 U.S.C. §  
3 1391;

4           3. That ELGO is the owner of the SIMPLYQUIT mark and that ELGO has  
5 been continuously using the mark in commerce since at least as early as September 21, 2001;

6           4. Without admitting fault or liability, SIMPLYWELL agrees that as of the  
7 date of this order, SIMPLYWELL shall stop advertising, publicizing or otherwise marketing any  
8 service or product with the mark SIMPLYQUIT or any other confusingly similar mark.  
9 However, ELGO hereby acquiesces to use of the mark SIMPLYSTOP for smoking cessation  
10 products.

11           5. SIMPLYWELL, its officers, shareholders, board members, employees,  
12 servants, agents, representatives, attorneys, and all individuals and entities acting in concert with  
13 and/or on SIMPLYWELL's behalf are hereby permanently enjoined from:

14           a. using the mark SIMPLYQUIT or any mark confusingly similar  
15 thereto in any manner, whether in conjunction with any smoking cessation products, services  
16 and/or on any advertising or marketing material; and,

17           b. assisting, enabling, or inducing others to do any such acts;

18           6. That SIMPLYWELL's counterclaims are hereby dismissed with  
19 prejudice;

20           7. That each party shall bear its own costs and attorneys' fees;

21           8. Within ten (10) days of the entry of this stipulation and order,  
22 SIMPLYWELL shall expressly abandon any and all applications and/or registrations for the  
23 mark SIMPLYQUIT currently pending in the United States Patent and Trademark Office;

24           9. Except for the terms of the judgment and permanent injunction stated  
25 herein, the parties hereby and forever mutually release and discharge one another and each of the  
26 other's present and former subsidiaries, affiliates, parent companies, employees, owners,  
27 officers, directors, general partners, limited partners, predecessors, assigns, agents, attorneys,  
28 insurers, and representatives from any and all causes of action, actions, judgments, liens,

1 indebtedness, damages, losses, claims, liabilities, and demands of every kind and character,  
2 whether known or unknown, suspected or unsuspected, excluding and excepting actions to  
3 enforce this stipulation and order. This mutual release applies to any and all past and present  
4 causes of action up to the date of this stipulation and order and this mutual release is with  
5 prejudice.

6       10. It is the intention of the parties in executing this stipulation that this  
7 stipulation shall be effective as a bar to each and every claim, demand, and cause of action that  
8 the parties may presently have against one another. In furtherance of this intention, the parties  
9 hereby expressly waive any and all rights or benefits conferred by the provisions of Section 1542  
10 of the California Civil Code, and by any similar provision of the law of any state, or federal law,  
11 now in effect or in effect in the future, and expressly consent that this stipulation shall be given  
12 full force and effect according to each and all of its express terms and conditions, including those  
13 relating to unknown and unsuspected claims, demands and causes of action specified above, if  
14 any. Section 1542 provides:

15           “A general release does not extend to claims which the creditor  
16 does not know or suspect to exist in his favor at the time executing  
17 a release, which if known by him might have materially affected  
18 his settlement with the debtor.”

19       11. The parties acknowledge that they understand the significance and  
20 potential consequences of their release of unknown claims and of the specific waiver of their  
21 rights under Section 1542 or similar law.

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12. The Court hereby retains jurisdiction over the parties for enforcement of the permanent injunction stated above.

## IT IS SO STIPULATED.

Respectfully submitted,

Dated: June 25, 2010

## **MANDOUR & ASSOCIATES, APC**

s/ Ben T. Lila  
Ben T. Lila (SBN 246808)  
Attorneys for Plaintiff,  
ELGO, INC.

Dated: June 25, 2010

HUSCH BLACKWELL SANDERS LLP

s/ Christopher M. Bikus  
Christopher M. Bikus  
Attorneys for Defendant,  
SIMPLYWELL, LLC

## **ORDER**

GOOD CAUSE APPEARING, IT IS SO ORDERED AND ADJUDGED.

Dated: June 25, 2010

**Hon. Consuelo B. Marshall  
United States District Judge**